IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11342-2012
Date of decision : 21.08.2015

Arjan Singh

... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar & Anr.

...Respondents

Coram : Hon'ble Mr. Justice Rajiv Narain Raina

Present : Mr. P.K. Chugh, Advocate for the petitioner.

Mr. C.S. Singh, Advocate for respondent No.2.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J. (ORAL)

1. I would dismiss the petition on merits but would not non-suit the petitioner on the objection of the respondent Haryana Tourism Development Corporation that the reference was barred by limitation, delay and laches and only to that extent I would not support the finding of the Labour Court that the limitation/delay bar applied to the present industrial reference. The labour court plainly misread the evidence on the point resulting in a fundamental flaw as to jurisdiction itself. The reasons for holding so are a few which requires familiarity with a few foundational facts. In brief, the petitioner was removed from service in the year 1997 by the respondent corporation after holding an enquiry. He filed a statutory appeal against the

removal order without delay in the same year which was decided by the competent authority in the year 2003 after inordinate delay. Thereafter, the petitioner raised an Industrial dispute by serving a demand notice on the respondent corporation in the year 2004 claiming reinstatement to service for wrongful removal by setting aside the order. He claimed retrospective continuity of service and arrears of full back wages. Efforts at conciliation of the dispute failed before the Labour Officer, upon which the appropriate Government made a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 to the Presiding Officer, Labour Court, Hisar from where this writ petition arises challenging the award.

2. The Labour Court has rejected the reference and declined relief to the workman altogether. In any case, the Act does not prescribe any limitation to invoke the provisions of Section 10 (1)(c) of the Act and such disputes including under Section 2A of the Act can be resorted to at any time but delay would remain a relevant factor in moulding the relief. Therefore, the finding on limitation recorded by the Labour Court relying on the rulings in **Nedungadi Bank Ltd v. K.P.Madhavankutty,** (2000) 2 SCC 455 reported and other cases in the same strain is not sustainable and is set aside. Those are cases where disputes were raised belatedly and the demand notices served after long lapse of time, say after 7 years, as in *Nedungadi case* where the Supreme Court observed that the Act was designed for

maintaining industrial peace. A belated reference cannot be mechanically made by the appropriate government since such a reference is destructive to the industrial peace and defeats the very object and purpose of the Act. The Supreme Court have held time and again that disputes should be raised within reasonable time otherwise many disabling and negative factors would come into play and become relevant in the matter of grant of relief of reinstatement or award of back wages. But the facts of the present case are otherwise since delay resulted in deciding the statutory appeal against the order of removal for which the petitioner could not be blamed. Therefore the labour court fell in error in holding that the reference was bad by reason of delay.

3. The reasons for dismissal of the writ in the main are as follows:

The Court's attention has been drawn to the merits of the case from where I find that charge of misconduct was not laid only on the petitioner. One R.D. Gupta, then Tourist Officer, exercising control and supervision over the work of the petitioner who then working as a Counter In-charge at the Tourist Complex at Asakhera, Tourism Centre, Tehsil Dabwali, District Sirsa was also involved in the incident to the extent of being the controlling supervisor of the petitioner was also charge-sheeted for lack of supervision. On the other hand, the petitioner was charge-sheeted for embezzlement and causing financial loss to the corporation in the Tourist Complex.

4. It has come on record as noticed by the Labour Court in para. 14 of the impugned award that the petitioner paid a sum of ₹ 1.25 lacs to one D.R. Malik, Supervisor and ₹ 1.28 lac to R.D. Gupta and another ₹ 15,000/- to one Maan Singh, Supervisor, who all are said to have assured him that the shortages in the accounts books will be adjusted by showing it as "evaporation loss" whatever that means. These are unexplained payments and it cannot be said with any exactitude as to what really prompted the petitioner to part with such large amounts of money. Absence of reasons forthcoming to explain these transactions with co-employees in the background of charge of embezzlement has weighed heavily in the mind of the Labour Court to decline relief altogether by treating them inferentially as an admission of the petitioner unless he was able to supply proof as to why he paid the sums of money. Thus, the admitted payments to D.R. Malik, R.D. Gupta and Maan Singh have outweighed all other considerations in the mind of the Labour Court including the finding recorded that the Enquiry held against the petitioner was neither fair nor. It has been recorded by the Labour Court that it is true that the applicant was not supplied the copy of documents relied upon by the department in the charge sheet. It is also true that virtually no evidence was led by the department before the Enquiry Officer to prove the charges but still the enquiry officer recorded findings against the applicant. Even the copy of the enquiry report was not given

to the applicant before issuance of show cause notice so as to enable him to represent against the findings of the enquiry officer to the disciplinary authority and explain his innocence.

5. The question really is whether breach of procedural law protections and violation of principles of natural justice would stretch beyond the point where unexplained but admitted conduct of the petitioner in making payments and explaining the as source from where the money came and how was it accounted for between the four employees and in the books of account.

6. The Labour Court weighed both sides of the coin with the enquiry file in one hand and the admission of blind payments in the other and held them in a balance and leaned in favour of the management holding that the conduct of the petitioner in paying lacs of rupees to the three persons was itself sufficient proof of improper behaviour which was not substantiated by defence evidence and remained not explained except by taking shelter of an immoral cause to cover up the embezzlement by "evaporation loss". This could be done only by fudging official account books and this the labour court thought was good enough reason to non-suit the delinquent justifying deprivation of employment by not awarding reinstatement or back wages. There is ample authority as well to describe this case in the admitted turpitudinous conduct of the petitioner in the Latin maxims: *allegans suam turpitudinem non est audiendus,* which means a person alleging his own infamy cannot be heard at any

forum and *ex turpi causa non oritur actio* which means no action arises from an immoral cause.

7. If discretion has been exercised judicially by the Labour Court in a particular manner on the evidence and relief has been declined then it is not possible to say that the award suffers from any perversity or the view taken is not plausible as a reasonable person might not take. The award does not result in manifest injustice. There is no fundamental legal flaw visible therein or any perverse finding of fact or any manifest error apparent on the face of the award. There is no error in reasoning adopted which might vitiate the award. Findings of fact recorded by Tribunals are final between the parties. Inference drawn from material and relevant facts and accompanying circumstances are also final provided they are logically deduced and when discretion has been exercised judicially it is also not open to review in writ proceedings so long as they all are not perverse, obscure or absurd.

8. This is not a case of competition between suspicion and proof with the former losing. The crux of the matter is whether the labour court was right in drawing an inference from the admitted fact of giving money to the trio which was a relevant fact. It is then not for this Court to re-appreciate the evidence while judicially reviewing the award passed by the Labour Court and in this journey the writ court remains guided by the principles of interference laid down by the Constitution Bench of the Supreme

Court while reviewing judicial work of Tribunals in **Syed Yakoob Vs. K.S. Radhakrishnan & others**, AIR 1964 SC 477 which are quoted hereafter:- "The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. <u>The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court.</u>" The indicated jurisdiction dissuades me to disturb the work of the labour court in this case.

9. There is yet another argument raised for the first time before this Court which deserves to be noticed and dealt with as it is Art. 14 based and therefore cannot be ignored even if not raised in the labour court. This Court had found during the arguments heard at length that on the record of the paper-book there is an order passed by the competent authority on 14.12.2002 in the case of R.D. Gupta who was also removed from service on 18.8.1994 but was reinstated by taking a lenient view and his punishment was converted into one of stoppage of three annual increments with cumulative effect and he was called upon to deposit the amount

indicated in the report of enquiry in lump sum within sixty days. The period during which R.D. Gupta remained out of service has been treated either as leave of the kind due or extraordinary leave. The question is that when both R.D.Gupta and the petitioner were removed from service being involved in the same episode then the action of the Corporation in reducing punishment in the case of R.D.Gupta then it is argued by the petitioner that punishment of dismissal from service is harsh and disproportionate to the misconduct which should be scaled down as in the case of R.D.Gupta. In order to answer this question the roles of both of them too would have to be examined. While R.D.Gupta was not charged with embezzlement he was charged with exercising lack of control and supervision in office. On the other hand, there was a direct charge of embezzlement levelled against the petitioner and that is where the difference lies and both cannot be equated. It may also be noticed that R.D. Gupta had filed a complaint on the basis of which an FIR was registered against the petitioner in the same incident. The petitioner was tried by the criminal court and convicted to three years imprisonment for committing offence of embezzlement. However, in appeal the order was reversed and he was acquitted of the charge on 18.09.2007, from where he claims his innocence which may be true fallout of acquittal. Nevertheless, he may be innocent for the society at large, but not necessarily in the eyes of the employer and of loss of confidence. He was acquitted when the charge failed when measured on the scale of standard of proof beyond reasonable doubt.

10. However, in domestic enquiries the Court has to consider only preponderance of probabilities gathered reasonably from the evidence and in such a situation a finding can be recorded that the preponderance of probability in passing of money to co-employees without sanction of the competent authority do not speak very happily in favour of the petitioner who paid large sums of money to the threesome- R.D. Gupta, D.R. Malik and Maan Singh, either on promise of infliction of lighter punishment or in avoidance of the charge of embezzlement itself if it remained hidden in case the proposed plan had succeeded then it might eventually shield him. Payment of money was a material circumstance. Obviously, there is no evidence of the other three admitting that shortages would be conveniently offset as evaporation losses on the records of the Corporation. I would not therefore wish to draw any parity in the case of R.D. Gupta and of the petitioner in the matter of non-discriminatory punishment when the roles of both were different in their degrees in the commission of fraudulent practice or causing financial loss to the Corporation. What the petitioner did was more reprehensible and showed lack of character. Besides, quantum of punishment is in the domain of the employer which remains the best judge of its business and who should run it in its Tourist Complexes.

11. As a result, I find no merit in this petition warranting interference in writ jurisdiction. The writ court sits in equity and

if the party before it lacks moral conduct then I would not interfere in any case with the award of the labour court.

12. Accordingly, the petition is ordered to stand dismissed without costs.

(RAJIV NARAIN RAINA)
JUDGE

21.08.2015
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